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Attorneys for Defendant
Megola, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NEWSTAR CHEMICALS (M) SDN BHD., a
Malaysian private limited company,
NEWSTAR HOLDINGS PTE LTD., a
Singaporean private limited company, and
RANDALL HART,

Plaintiffs,

vs.

MEGOLA, INC., a Nevada corporation and
DOES 1 through 500,

Defendants.

Case No. 2:11-cv-00926-GMN-(RJJ)

**REPLY IN SUPPORT OF
DEFENDANT'S MOTION FOR
EXTENSION OF TIME AND
ADJOURNMENT OF JULY 7
HEARING DATE**

Defendant Megola, Inc. ("Megola" and/or "Defendant") hereby submits its reply in support of its motion for entry of an order extending the time for Megola to file and serve its opposition to Plaintiffs' motion for a *permanent* injunction.¹

Introduction

Whether and to what extent Defendant should be granted an extension of time should be a function of how the Court intends to proceed. If the Court intends for Defendant to file a comprehensive response by July 1 and defend itself at a full-blown evidentiary hearing on July 7 then there is no question that Defendant and its undersigned counsel have not had a sufficient opportunity to meet and learn the facts of this case, conduct an investigation into Plaintiffs'

¹ Although Plaintiffs filed a motion seeking a *preliminary* injunction, it now appears that Plaintiffs are attempting to obtain a *permanent* injunction on a hurry-up basis. (See Pltfs.' Opp. Br. at 3 ("The fact that Megola has indicated it is prepared to file a responding brief by July 19, 2011, while not requesting any discovery, supports Plaintiffs' position that a short briefing schedule is warranted for Plaintiffs' request for a *permanent* injunction")).

1 allegations, review documents, conduct witness interviews, or obtain discovery from Plaintiffs. If,
 2 on the other hand, the Court merely desires initial briefing and a short hearing to determine the
 3 scope of the parties' dispute and whether and to what extent any discovery may be necessary prior
 4 to receiving additional briefing and conducting an evidentiary hearing, then Defendant and its
 5 counsel would likely still need an extension of time, but a much shorter one.

6 Argument

7 The Court should clarify how it intends to address Plaintiffs' motion and, in any event,
 8 should grant Defendant an extension of time to file and serve its opposition brief for the following
 9 reasons.

10 *First*, Plaintiffs have unreasonably insisted that Defendant file a response to Plaintiffs'
 11 motion by July 1, 2011. (*See* Exhibit A.) This demand is unreasonable because the time for
 12 Defendant to respond under the federal and local rules is July 5. Plaintiffs' motion was served on
 13 June 16. (*See* Docket No. 12.) Under Local Rule 7-2, Defendant has 14 days to respond (*i.e.*,
 14 until June 30, 2011). However, under Federal Rules of Civil Procedure 5(b)(2)(C) and 6(d),
 15 Defendant is entitled to an additional three days (*i.e.*, until July 3, 2011) because the motion was
 16 served by mail. And, because July 3 falls on a Sunday, and because July 4 is a federal holiday,
 17 under Federal Rule of Civil Procedure 6(a)(1)(C), the time for Defendant to respond is extended
 18 until the next day that is not a weekend or a legal holiday. Thus, the soonest Defendant's
 19 opposition is due under the federal and local rules is July 5, 2011.²

20 *Second*, the Court should grant the requested extension because Defendant has been
 21 diligent in obtaining counsel. Plaintiffs' motion was served on June 16, 2011. (*See* Docket No.
 22 12.) Defendant diligently retained the undersigned just four days later, on June 20, 2011. (*See*
 23 Docket No. 13, Deft.'s Mot. for Ext. of Time at 1, ll. 25.) Nevertheless, Defendant's undersigned
 24 counsel has not had a sufficient opportunity to meet with Defendant's principal, who resides in
 25 Canada, to review documents concerning the agreements and corporate transactions bearing on
 26 Plaintiffs' alleged rights in the HARTINDO AF21 mark, or to conduct legal research with respect

27 ² The Court has not entered an order setting a different date. The Court's minute order of June 15, 2011 states
 28 that a briefing schedule will be established at the July 7, 2011 hearing. (*See* Docket No. 11.) Thus, it was initially
 unclear to Defendant whether any response was required prior to the scheduled July 7 hearing.

1 to the same. In addition, the undersigned has been substantially involved in two unrelated actions
 2 in the last two weeks where temporary injunctive relief was or is being sought. While the press of
 3 business may not be an issue for Plaintiff who has at least five lawyers arrayed against Defendant,
 4 requiring the undersigned to fully respond to the motion by July 1, 2011 would do violence to
 5 notions of due process and the strong federal policy of deciding disputes on the merits. And,
 6 although Plaintiffs argue that Defendant has been on notice of its claims since May 20, 2011,
 7 Defendant's undersigned counsel received no such notice prior to being retained by Defendant.

8 *Third*, other than making blanket assertions about unspecified damage to its alleged
 9 trademark rights and Defendant continuing to make allegedly damaging statements, Plaintiffs have
 10 not demonstrated that they will suffer any actual prejudice by the requested extension. Plaintiffs'
 11 refusal to consent to the requested extension appears to be nothing more than an attempt to
 12 increase the burden of litigation on Defendant.

13 Conclusion

14 Defendant respectfully requests that the Court clarify how it intends to address Plaintiffs'
 15 motion or, in the alternative, that the Court grant Defendant an extension of time (both with
 16 respect to the filing of its opposition brief and with respect to the conduct of any hearing) of
 17 sufficient duration to allow Defendant to investigate Plaintiffs' allegations, meet and confer with
 18 its counsel, conduct any necessary discovery, and otherwise meet Plaintiffs' motion on the merits.

19 Dated: this 27th day of June, 2011.

20 Respectfully submitted,

21 LEWIS AND ROCA LLP

22 By: s/Jonathan W. Fountain
 23 Jonathan W. Fountain (NV Bar No. 10351)
 24 3993 Howard Hughes Parkway, Suite 600
 25 Las Vegas, NV 89169
 (702) 949-8200 (Tel.)
 (702) 949-8398 (Fax)

26 Attorneys for Defendant
 27 Megola, Inc.

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Lewis and Roca LLP and that on this 27th day of June, 2011, I caused the foregoing document entitled: REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR EXTENSION OF TIME AND ADJOURNMENT OF JULY 7 HEARING DATE, to be served via the Court's CM/ECF system to the following counsel of record:

John S. Worden
SCHIFF HARDIN LLP
One Market, Spear Street Tower
Thirty-Second Floor
San Francisco, CA 94105

Carlos Blumberg
BLUMBERG LAW FIRM
10161 Park Run Drive,
Suite #150
Las Vegas, Nevada, 89144

I hereby further certify that on this 28th day of June, 2011, I caused the foregoing document entitled: REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR EXTENSION OF TIME AND ADJOURNMENT OF JULY 7 HEARING DATE, to be served via first-class United States mail upon the following non-CM/ECF users:

Maxim H. Waldbaum
Brian Neff
Henry Mann
SCHIFF HARDIN LLP
666 Fifth Avenue, 17th Floor
NEW YORK, NY 10103

s/Jonathan W. Fountain
An employee of Lewis and Roca LLP

Exhibit A

Fountain, Jonathan

From: Neff, Brian J. [BNeff@schiffhardin.com]
Sent: Tuesday, June 21, 2011 10:59 AM
To: Fountain, Jonathan
Cc: Waldbaum, Maxim H.; Worden, John S.; BlumbergLaw@aol.com; Mann, Henry L.; Behnen, Henry P.
Subject: RE: Newstar Chemicals, et al. v. Megola, Inc.

[Entry #7 on the Court's docket indicates that your response is due by 7/1. A cert of service was filed about an hour ago.](#)

From: Fountain, Jonathan [mailto:JFountain@lrlaw.com]
Sent: Tuesday, June 21, 2011 12:57 PM
To: Neff, Brian J.
Cc: Waldbaum, Maxim H.; Worden, John S.; BlumbergLaw@aol.com; Mann, Henry L.; Behnen, Henry P.
Subject: RE: Newstar Chemicals, et al. v. Megola, Inc.

Thanks. However, Megola's response to the preliminary injunction motion is not due on 7/1. Judge Navarro's minute order states that on 7/7 she is going to set a briefing schedule with respect to the preliminary injunction motion. I also note that it is not clear whether a copy of the motion has even been served on Megola since no certificate of service was filed. Even if Judge Navarro did not intend to set a briefing schedule at the 7/7 hearing, any response date would run, at the earliest, from the date the motion was served. Under our local rules Megola would have 14 + 3 days from the date of service to file and serve a response.



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Please consider the environment before printing this e-mail.

From: Neff, Brian J. [mailto:BNeff@schiffhardin.com]
Sent: Tuesday, June 21, 2011 7:58 AM
To: Fountain, Jonathan
Cc: Waldbaum, Maxim H.; Worden, John S.; BlumbergLaw@aol.com; Mann, Henry L.; Behnen, Henry P.
Subject: RE: Newstar Chemicals, et al. v. Megola, Inc.

Dear Mr. Fountain:

On behalf of the Plaintiffs in the Nevada action, we consent to 7/5 as the due date for Megola to answer/respond to the complaint in that action. Although your email does not request any extension of the 7/1/11 due date for Megola's response to the application for a Preliminary Injunction, or the 7/7/11 court date, I'd like to clarify that we do not consent to any adjournment of those dates.

Regards,

Brian

From: Fountain, Jonathan [mailto:JFountain@lrlaw.com]
Sent: Monday, June 20, 2011 7:40 PM
To: Neff, Brian J.; Mann, Henry L.
Subject: FW: Newstar Chemicals, et al. v. Megola, Inc.; Ecoblu v. Megola, Inc.

[Please see below.](#)

6/27/2011

Regards,

Jonathan



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Please consider the environment before printing this e-mail.

From: Fountain, Jonathan

Sent: Monday, June 20, 2011 4:35 PM

To: 'jworden@schiffhardin.com'; 'mwaldbaum@schiffhardin.com'; 'bmeff@shiffhardin.com'; 'bmann@schiffhardin.com'; 'blumberglaw@aol.com'

Subject: Newstar Chemicals, et al. v. Megola, Inc.; Ecoblu v. Megola, Inc.

Gentlemen:

We have been retained to represent Megola, Inc. in connection with actions filed against it in California and Nevada. Please let me know if you will consent to an extension until 7/5 for Megola to answer or otherwise respond.

Best regards,

Jonathan



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6/27/2011

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